

IN SENATE OF THE UNITED STATES.

MAY 3, 1848.

Submitted, and ordered to be printed.

Mr. PHELPS made the following

REPORT :

*The Committee on Finance, to whom was referred the memorial of  
John W. Leuchs, respectfully report:*

That the petitioner asks remuneration for the damage sustained by him in consequence of the seizure and sale of five cases of fancy goods, imported by him from Brëmen, by the officers of the customs of the port of New York, under the following circumstances:

The five cases, as he alleges, were intended for re-exportation to Canada, and were intended for five different merchants of Montreal. Upon examining the cases at the custom house, one of the cases was found to contain a parcel of snuff boxes, (240 dozen,) ornamented with indecent and obscene pictures. The five packages being contained in one invoice, the whole were seized, under the 28th section of the tariff act of 1842.

The precise date of the seizure does not appear; but on the 1st of June, 1846, the petitioner applied to the Secretary of the Treasury for relief. On the 2d of the same month, a reply was addressed to him by the department, advising him that a report had been called for from the collector, and that a further communication would be made when that report should be received. On the 5th of June, 1846, a letter from the department was addressed to the petitioner, advising him "that the department had no legal authority to act in the matter, until an examination should be had by the United States district judge, in accordance with the remission act of 3d March, 1797."

The petitioner absolutely refused to apply to the district judge, but persisted in his importunities to the department, until the goods so seized had been sold by the marshal. The department at last informed that it was "utterly without legal authority" to interfere. The petitioner puts his claim for relief upon two grounds:

1st. That one case of the goods only were liable to seizure, to wit: the one containing the prohibited article; and

2d. That he was ignorant of the fact that the prohibited article was in the case.

With respect to the first ground, the committee are of the opinion that the whole invoice was subject to seizure by the express terms of the law. If this were questionable, it was, as the committee think, a proper subject of judicial investigation, if the petitioner chose to make it such; and not a matter to be referred to Congress, who are not the constitutional judicial expounders of their own laws.

Nor can the committee regard the fact that the goods were intended for re-exportation as important. If exported, the goods would be entitled to drawback; but whether they would be so exported or not was a matter optional with the petitioner. He might, if he chose, dispose of them in the country, if once lawfully imported. The result is that the goods must be subject, upon importation, to the same rules, under the revenue laws, as if intended for consumption here.

As to the second ground, the committee think that the burden of proof is upon the petitioner, as every importer is to be presumed to know the contents of a package imported by him, until the contrary be shown. On this point there is no evidence before the committee, except a memorandum which purports to exhibit the order of the Canadian merchant, and which contains the item, "1 gross snuff boxes, assorted, *in great variety*, and not more than one dozen, if possible, of one quality, some of which with *caricatures and other fancy pictures*."

This indicates strongly that the petitioner was conversant of the character of the article. In the absence of all proof of mistake or imposition, the committee do not think the innocence of the party is to be assumed.

They are further of opinion that they ought not to encourage applications to Congress, in a case already provided for by law, where the party declines to pursue his legal remedy without assigning any reason for his refusal. Aside of the impropriety of interfering with the execution of the laws, it cannot escape observation that the district judge is much more competent to ascertain the truth than a committee of Congress. They therefore submit the following resolution:

*Resolved*, That the prayer of the petitioner cannot be granted.